

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed February 26, 2007 (the "Office Action"). At the time of the Office Action, Claims 1-33 were pending in the Application. The Office Action rejects Claims 1-33. Applicants respectfully request reconsideration and favorable action in this case.

Section 112 and Section 101 Rejections

The Office Action rejects Claims 17-24 under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. More specifically, the Office Action recites that "the specification does not specifically describe or define what is the 'media'. Therefore, the specification does not enable one ordinary skilled in the art to make and use the claimed invention." *Office Action*, page 2. The Office Action also rejects Claims 17-24 under 35 U.S.C. § 101 because the Office Action suggests that the claimed invention is directed to non-statutory subject matter. More specifically, the Office Action states that "[s]oftware or program per se without recitation in a computer readable media is non-statutory subject matter." *Office Action*, page 3. As amended Claim 17 recites that the logic is encoded in computer readable medium. Claims 18-24 depend from Claim 17. Therefore, Applicants respectfully request that these rejections of Claims 17-24 be withdrawn.

Section 102 Rejections

The Office Action rejects Claims 1-33 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Publication US 2003/0117678 A1 issued to Chang, et al., ("*Chang*").

To anticipate a claim, each and every limitation must be found in a reference. *See* MPEP § 2131. "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989). In addition, "[t]he elements must be arranged as required by the claim" *In re Bond*, 15 USPQ 2d 1566 (Fed. Cir. 1990).

Claim 1 recites computing a hybrid path route for a selected label switched path (LSP) between a first node and a second node of the plurality of nodes, the hybrid path route

comprising at least one lightpath of a wavelength division multiplex (WDM) topology coupled to the IP network. The Office Action contends that this is disclosed in *Chang* paragraph 0113. *Office Action*, pages 3-4. Paragraph 0113 of *Chang* discusses network elements 121-125 and network control and management device (NC&M) 220 which are wavelength division multiplex (WDM) components. *Chang*, paragraph 0113. Throughout *Chang* any disclosure which may be related to routing deals only with optical components such as WDM network elements 121-125 depicted in FIG. 1. *See e.g.*, *Chang* FIG. 2 and paragraph 0105 (the source and destination for a path is shown to be two nodes in optical network 200); FIG. 5 and paragraph 117 (a WDM backbone network). *Chang* does not disclose using non-optical links when calculating routes or paths. Thus, *Chang* does not disclose a hybrid path route for a selected label switched path (LSP) between a first node and a second node of the plurality of nodes, the hybrid path route comprising at least one lightpath of a wavelength division multiplex (WDM) topology coupled to the IP network. Accordingly, for at least this reason, Claim 1 is allowable, as are all claims depending therefrom. For analogous reasons, Claims 9, 17, 25 and 33 are also allowable, as are all claims depending therefrom. Favorable action is requested.

Claim 1 also recites determining whether performance of the hybrid path route for the selected LSP reduces costs and if the hybrid path route reduces costs activating a new IP link on each of the at least one lightpaths of the WDM topology and rerouting the selected LSP according to the hybrid path route. The Office Action contends that this is disclosed in *Chang* paragraphs 0105 and 0101-0109. *Office Action*, page 4. *Chang* discloses that if the preferred path is being used then a second preferred path is selected. *Chang*, paragraph 0105. Both the preferred path and the alternate path (second preferred path) are both present, thus there is no activation of a new path. *See e.g.*, FIG. 2 and paragraph 0105. Furthermore, the alternate path in *Chang* is selected when the preferred path is "already occupied" (*Chang*, paragraph 0105) not because it reduces the cost. Accordingly, *Chang* does not disclose determining whether performance of the hybrid path route for the selected LSP reduces costs and if the hybrid path route reduces costs activating a new IP link on each of the at least one lightpaths of the WDM topology and rerouting the selected LSP according to the hybrid path route. Therefore, for at least these additional reasons, Claim 1 is allowable as are all claims

depending therefrom. For analogous reasons, Claims 9, 17, 25 and 33 are also allowable as are all claims depending therefrom. Favorable action is requested.

Claim 1 further recites monitoring the IP network for a congestion event and upon detecting a congestion event, selecting a LSP of the IP network for reroute. The Office Action contends that this is disclosed in *Chang* paragraph 0113. *Office Action*, page 3. *Chang* discloses measuring "estimated traffic" and delays which are used for routing tables that are distributed to the network elements. *Chang*, paragraph 0113. *Chang* does not disclose selecting a LSP of the IP network for reroute upon detecting a congestion event. Accordingly, for at least this additional reason, Claim 1 is allowable as are all claims depending therefrom. For analogous reasons, Claims 9, 17, 25 and 33 are also allowable as are all claims depending therefrom. Favorable action is requested.

Claim 2 recites decommissioning an idle IP link after rerouting the selected LSP. The Office Action contends that this is disclosed in *Chang* paragraph 0113. *Office Action*, page 4. *Chang* discloses collecting routing information, creating routing tables and then distributing the routing tables to various network elements. *Chang*, paragraph 0113. Nowhere does *Chang* disclose decommissioning an idle IP link after rerouting the selected LSP. Therefore, for at least this additional reason Applicants request that this rejection of Claim 2 be withdrawn. For analogous reasons, Applicants also request that this rejection of Claims 10, 18 and 26 be withdrawn.

Claim 4 recites that determining whether performance of the hybrid path route for the selected LSP reduces costs comprises accounting for a cost associated with each IP link and each lightpath of the hybrid path route. The Office Action contends that this is disclosed in *Chang* paragraph 0105. *Office Action*, page 4. As discussed above, *Chang* is only concerned with routing and costs associated with optical components. *See e.g. Chang*, Abstract, paragraphs 99 and 0105. Thus, *Chang* does not disclose determining whether performance of the hybrid path route for the selected LSP reduces costs comprises accounting for a cost associated with each IP link and each lightpath of the hybrid path route. Accordingly, for at least this additional reason Applicants request that this rejection of Claim 4 be withdrawn.

For analogous reasons, Applicants also request that this rejection of Claims 12, 20 and 28 be withdrawn.

No Waiver

All of Applicants' arguments and amendments are without prejudice or disclaimer. Additionally, Applicants have merely discussed example distinctions from the references cited by the Examiner. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a future Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicants are sufficient to overcome the Examiner's rejections.

CONCLUSION

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending claims.

If the present application is not allowed and/or if one or more of the rejections is maintained, Applicants hereby request a telephone conference with the Examiner and further requests that the Examiner contact the undersigned attorney to schedule the telephone conference.

No fee is believed to be due. However, the Commissioner is hereby authorized to charge any fees to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorneys for Applicants



Chad C. Walters
Reg. No. 48,022
Tel. (214) 953-6511

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